

CLIENT ASSISTANCE PROJECT

LEGAL ADVOCACY FOR PERSONS  
WITH DEVELOPMENTAL DISABILITIES

MENTAL HEALTH LAW PROJECT

PROTECTION AND ADVOCACY FOR  
INDIVIDUAL RIGHTS

EXECUTIVE DIRECTOR  
Jeremy Lane

LEGAL DIRECTOR  
Pamela S. Hoopes

ADMINISTRATOR  
Lisa Cohen

SUPERVISING ATTORNEYS  
Roderick J. Macpherson III Steven  
P. Elliot

MINNESOTA DISABILITY LAW CENTER

THE PROTECTION & ADVOCACY  
SYSTEM FOR MINNESOTA

430 FIRST AVENUE NORTH, SUITE 300  
MINNEAPOLIS, MN 55401-1780  
(612)332-1441  
(TDD) 332-4668  
Toll Free 1-800-292-4150  
FAX (612) 334-5755

ATTORNEYS

Jennifer E. Giesen  
Luther Granquist  
Kathleen Hagen  
Anne L. Henry  
Kathy S. Kosnoff  
Anne M. Robertson  
Barrett I. Rosenfield  
Patricia M. Siebert

ADVOCATES

Linda Bonney (Grand Rapids)  
Kirsten Dubbels (Fergus Falls)  
Cynthia M. Jarvi (Minneapolis)  
Bonita Kallestad (Willmar)  
Sandra M. Moore (Duluth)  
Rochelle Roehrich (Minneapolis)  
Sharon Sanders (Duluth)  
Marilyn Spensley (Park Rapids)

TO: Interested Persons

FROM: Anne L. Henry 

RE: Health And Human Services Legislation Affecting Persons With Disabilities

DATE: May 16, 2000

The 2000 Legislative session was noteworthy for the large budget surplus, \$1.8 billion, very little of which was directed toward improving the serious issues affecting persons with disabilities.

A. FISCAL PROVISIONS OF THE OMNIBUS SPENDING BILL FOR HEALTH AND HUMAN SERVICES, CHAPTER 488.

1. Provider Rate Increases.

A cost-of-living increase for direct care staff was funded at an additional 3 percent on top of a 3 percent increase already scheduled for effect July 1, 2000, for a total increase of 6 percent. This cost-of-living increase affects all community support and long term care services for persons with disabilities, including PCAs, ICFs/MR, home and community waivers, mental health services, deaf and hard of hearing, etc. The cost of this increase for the coming state fiscal year (July 1, 2000 - June 30, 2001) is about \$26 million.

2. Expansion of the Prescription Drug Program to Persons with Disabilities Under 65 Eligible for Medicare.

This expansion for persons with disabilities only becomes effective July 1, 2002, and is limited to those under 100 percent of the federal poverty level compared to 120 percent for the elderly. The asset standards were raised to \$10,000 for one and \$18,000 for a couple beginning 10/1/00 for those 65 and older. The expansion for persons with disabilities was delayed for two years as part of the tradeoffs in spending for health and human services, despite the fact that \$17 million was unused in the

Prescription Drug Program due to lower than expected enrollment of seniors. Congressional action on the federal proposal to expand Medicare to include prescription drug coverage will affect Minnesota's Prescription Drug Program for seniors and persons with disabilities.

3. MA Income Standard.

The Legislature did not fund an increase in the Medical Assistance (MA) income standard for next January. Minnesota's MA income standard will rise to \$481 (plus the \$20 income disregard) on July 1, which is still 30 percent below the federal poverty level. Advocates are mounting a "100% Campaign" to raise the Medical Assistance income standard up to the federal poverty level (\$696/month for 1 person in 2000). Minnesota's current MA income standard for persons who are elderly or disabled is the lowest standard for all groups in our state's Medical Assistance Program. We expect a broad coalition to support raising the income standard to 100 percent of the poverty level during the 2001 legislative session.

4. Adoption Assistance.

Funding for the Adoption Assistance Program was increased by \$2.5 million.

5. Increase in Special Transportation Reimbursement.

The special transportation rate was increased by ten cents per mile for a cost of \$444,000 for state fiscal year 2001.

6. General Assistance Medical Care (GAMC) for Persons with Drug and Alcohol Addiction.

Eligibility for GAMC and group residential housing for persons with drug and alcohol addiction was continued for another two years.

B. POLICY CHANGES.

1. Minnesota Family Investment Plan (MFIP) Minnesota's Welfare Program, Chapter 488.

Provisions which exempt families from reductions in their cash grants (sanctions) if the parent cannot work or attend orientation due to care-giving responsibilities for a household member with a disability were adopted in the Omnibus Funding Bill. Also,

consumer support grants and home and community waiver funding will be excluded in calculating the MFIP grant amount. Minn. Stat. §§ 256J.21, Subd. 2; 256J.45, Subd. 3; 256J.56, Subd. a9.

2. Family Support Grant Changes. Chapter 330.

This legislation allows a family to obtain a grant to pay off home modification debt if the child is offered a home and community-funded waiver slot. This change was necessary because families are prohibited from receiving both a family support grant and services under the mental retardation/related conditions waiver. This change became effective April 5, 2000. The DHS bulletin informing counties of the change should be available soon on the DHS website: [www.dhs.state.mn.us](http://www.dhs.state.mn.us), click on "Manuals, Reports and Bulletins."

3. Legal Guardians Paid for PCA Services. Chapter 474.

The non-corporate legal guardian or conservator of an adult, who is not the responsible party and not the personal care provider organization, can be paid as a PCA under a hardship waiver. This provision becomes effective May 16, 2000, and remains in effect only until July 1, 2001. This matter will have to be on the legislative agenda again next year.

4. Managed Care Project for Persons with Disabilities (DPPD), Chapter 340.

Legislation allowing DHS to switch from the Demonstration Project (DPPD) to Managed Care under the Prepaid Medical Assistance Program (PMAP) has been enacted. The project is required to have voluntary enrollment for one year. This legislation has alarmed advocates because it was hastily enacted without consideration of needed protections. Efforts to include consumer protections for any managed care system for persons with disabilities will be on the advocacy agenda for the next legislative session.

5. MA for Employed Persons with Disabilities, Chapter 340.

DHS' proposed language which limits participation in the MA-EPD Program to those between the ages of 16 and 64 was adopted. According to DHS, this age limitation was needed because the Department currently implements the program only for those under age 65 and the new federal Work Incentives Act establishes the 16 to 64 age range. In addition, DHS opposed an amendment to allow persons with disabilities participating in the program prior to age 65 to continue after 65 because it would

have a substantial cost and may not be approved by the federal oversight agency, HCFA, because persons over 65 would be treated differently depending upon whether they had a disability before age 65.

6. Foster Care Provider Training on Medical Equipment, Chapter 338.

Foster care providers must now meet medical equipment competency requirements if they provide care for children needing such equipment. This legislation was pursued by parents of a medically complex child who died in foster care during a respite placement.

7. Vulnerable Adult Changes, Definition of Neglect, Chapter 319.

This legislation allows licensed employees to have disqualification decisions made by health licensing boards, such as the Board of Nursing, rather than by DHS. The legislation also changes the definition of neglect for a single incident or error if the person is not seriously harmed, no pattern exists, incident is reported and needed care is obtained.

8. Vulnerable Adult Maltreatment Review Panel, Chapter 465.

The Vulnerable Adult Maltreatment Review Panel was created in order to review lead agency decisions on vulnerable adult complaints. The panel, consisting of four members, includes the Commissioners of Health, Human Services, the Ombudsman for Older Minnesotans and for Mental Health and Mental Retardation. A review can be requested by the vulnerable adult or an "interested person acting on behalf of the vulnerable adult" which means a person designated in writing by the adult, legal guardian or conservator, proxy or health care agent appointed under statute or an individual related to the vulnerable adult. A report to the Legislature is due each January 15 on the number of requests for review, the number of cases requiring the lead agency to reconsider their final disposition and the number of cases where the final disposition is changed plus any recommendations for improvement of the review or investigative process.

9. State-Operated Dental and Psychiatric Services, Chapter 465.

An amendment regarding the state operated Southern Cities Community Health Clinic was added at the last minute to the Vulnerable Adults Bill, Chapter 465. The provision requires DHS to continue to offer psychiatric and dental services to persons with developmental disabilities within 100 miles of the Faribault Clinic. In addition,

before any changes are made affecting the Southern Cities Community Health Clinic, the Commissioner must notify the chairs of responsible committees at the Legislature and have at least one legislative session prior to implementation.

10. Civil Commitment for Persons with Mental Illness, Chapter 316.

This legislation allows a family member to submit a written request to the mental health provider requesting the patient's authorization for the provider to release information about the patient to the family member. A second provision allows a parent or legal guardian to admit a 16- or 17-year-old for mental health treatment upon an independent examination showing reasonable evidence that the child has a mental illness.

11. Changes to the Human Services Licensing Act- Chapter 327.

DHS Licensing Act changes include: 1) allowing housing with services providers to seek licensure as an adult foster care provider, even though these programs are not required to be licensed, 2) providing tribal organizations performing licensing activities access to criminal history information in order to conduct background studies, and 3) updating to the list of criminal statutes to be considered in disqualification proceedings.

12. Unemployment Compensation for Employed Persons with Disabilities, Chapter 488.

A provision to restore the right of working persons receiving Social Security Disability Insurance to obtain Unemployment Compensation when laid off has been adopted. The provision is effective retroactively to August 1, 1999. Also, receipt of Social Security Disability Insurance is added to a provision which reduces Unemployment Compensation benefits for persons over 62 years of age who receive retirement benefits. This will mean that persons 62 and over who are laid off and receiving Social Security retirement or disability benefits will have their Unemployment Compensation amount reduced by 50 percent of the weekly equivalent of the primary Social Security benefit.

13. Children's Mental Health Residential Rule 5 Facilities. Chapter 447.

Changes have been made to Medical Assistance payment limits and administration for Rule 5 facilities slated to begin 7/1/00 with counties responsible for the MA nonfederal share of the costs. Additionally, DHS was given authority to suspend

funding of Rule 5 programs in counties which do not follow requirements, including using state admission criteria.

14. Mental Health Case Management for Adults and Children, Chapter 474.

Changes to the requirements for case managers for children and adults include defining supervised experience and training requirements.

15. Hiawatha Homes Licensing Exemption. Chapter 474.

Hiawatha Homes in Rochester is allowed to downsize from a 43-bed ICF/MR to 5-person waiver sites instead of 4-person homes.

16. Personal Care Assistant Changes, Chapter 474.

Changes to the assessment process for PCA services include clarification that the public health nurse is to make recommendations for PCA services and communicate the recommendations to DHS and the recipient. The public health nurse is not responsible for the evaluation of service outcomes or the collection of case effectiveness data. Provision of PCA services to individuals in foster homes will no longer include cost effectiveness calculations including room and board payment. The foster care cost effectiveness calculations were disallowed after a federal review. Language clarifying that normal activity outside the home is allowed under shared PCA and shared private duty nursing was added to the PCA statute. Shared private duty nursing is limited to two recipients at the same time rather than "several."

17. ICF/MR Contract Provisions, Chapter 474.

ICF/MR facilities will be allowed to focus on one performance measure for quality improvement during the contract period. Also, DHS and the Health Department must consult with interested representatives to review licensing standards and the Supervised Living Facility Rule to determine provisions to be waived under performance contracting. Variable rate adjustments will include the possibility of a rate change due to a change in the resident day program for individuals who have reached age 65, had a change in health condition making participation "medically contraindicated" or has expressed a desire to change through the screening process. Additional resources could also be provided for "intensive short-term training necessary prior to the resident's discharge to a least restrictive more integrated setting." DHS is to review variable rates during the initial contract period to assure

effective implementation, reduction of unnecessary detailed record keeping and meeting resident needs.

18. Case Mix Adjustments, Chapter 315.

DHS is required to make adjustments to case mix payments for nursing homes using the performance-based contracting system. These adjustments must be budget neutral for each facility. Any change to the nursing home case mix system will have an effect on PCA services and some home and community waiver services. The changes are to be incorporated beginning July 1, 2001, but no later than January 1, 2002.

19. Unlicensed Mental Health Practitioner. Chapter 460.

Amends the definition of unlicensed mental health practitioner to exclude American Indian medicine men and women, licensed attorneys, probation officers, school counselors employed by districts, registered occupational therapists, and occupational therapy assistants. Minn. Stat. § 148B.60, Subd. 3.

C. **LEGISLATION REQUIRING RECOMMENDATIONS FOR THE 2001 SESSION, TASK FORCES AND STUDY.**

1. Public Guardianship, Chapter 429.

DHS is required to develop recommendations on transferring public guardianship responsibilities to a multi-purpose private agency or other state office with no current responsibility for persons with mental retardation or related conditions. The recommendations are due December 15, 2000.

2. Employer-Based Health Insurance for Dependent Children of Employees Earning Less Than 200 Percent of the Federal Poverty Level, Chapter 488.

The Commissioner of Human Services is required to report to the Legislature by January 15, 2001 on the parameters of federal requirements to provide a direct subsidy for employer-based health coverage for dependent children of families earning less than 200 percent of the poverty level. Any public subsidy must not create incentives for employers to utilize publicly-subsidized health care and or require changes to employer-based health coverage.

3. Report on Health Insurance for Direct Care Staff Employees. Chapter 460.

The Commissioner of Health is required to develop recommendations for the Legislature on providing employer-subsidized affordable health insurance to employees serving the elderly and persons with disabilities. The recommendations are due January 15, 2002.

4. Day Training and Habilitation (DT&H) Services.

- a. The DT&H Task Force established last year is extended until June 15, 2001, in order to recommend a new payment rate schedule for DT&H services to the Legislature by January 15, 2001, Chapter 488.
- b. The Commissioner is required to consult with counties and advocates to develop recommendations to obtain Medical Assistance funding for DT&H services now paid for with county and CSSA dollars. These recommendations are due December 1, 2000, Chapter 400.

5. Respite Care for Family Adult Foster Care Providers, Chapter 488.

DHS, in consultation with affected groups, shall develop legislative proposals, including cost projections, to provide 30 days of respite care per year for family adult foster care providers by December 1, 2000.

6. Group Residential Housing Study, Chapter 340.

DHS, in consultation with interested parties, is required to review group residential housing expenditures that may be eligible for home and community waiver reimbursement. This analysis was sought by providers and advocates in order to obtain better funding since the cap on group residential housing rates was imposed last session.

7. Home Care Transportation Study. Chapter 314.

The Minnesota Home Care Association in collaboration with DHS will prepare a study and report to the Legislature on reimbursing home care and personal care service providers for transportation. This report is due December 15, 2000.



8. Special Transportation Study on Rates. Chapter 296.

DHS, in consultation with affected groups, is required to study appropriate reimbursement for special transportation including consideration of persons who need a lift or ramp, stretcher-equipped vehicles, ambulation assistance, and the effect of urban and rural locations.

9. Minnesota Comprehensive Health Insurance Association (MCHA) Report. Chapter 398.

All state agencies and political subdivisions are required to report to MCHA and the Commissioner of Commerce by 9/15 each year on the number of persons whose MCHA premiums are paid by the agency for the year ending 6/30. This reporting obligation was substituted for an effort by MCHA to prevent state agencies from assisting persons with MCHA premium payments. Children with special health needs and persons with HIV-AIDS would have lost coverage if the MCHA provision had passed.

In addition, the Association is required to report to the legislature by 11/15/00 on the impact of raising the maximum premium rates, feasibility of a sliding fee scale, and out-of-pocket expenses.